



STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

OFFICE OF THE GOVERNOR
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June 28, 2006

Leesa Morrison
Director
Department of Liquor Licenses and Control
800 West Washington St., 5th Floor
Phoenix, Arizona 85007

Re: House Bill 2621; illegal liquor sales; liability

Dear Director Morrison:

Today I signed House Bill 2621 related to illegal liquor sales.

Although this bill affords some options to liquor license holders that may be appropriate in some circumstances, it creates the potential for establishments that clearly do not qualify as restaurants to sell liquor in locations that are not in the best interest of the communities in which they reside.

In implementing this bill, therefore, I am instructing the Arizona Department of Liquor to give careful and appropriate consideration to community objections to the establishment's maintenance of a liquor license under the circumstances, as well as to the establishment's proximity to schools, youth centers, churches and other established locales that are likely to be adversely affected by the establishment's continued maintenance of a liquor license under the particular circumstances.

Finally, in addition to the report required pursuant to section 7 of House Bill 2621, I am further requesting that you provide an interim report six (6) months after the effective date of this new law.

Yours very truly,

A handwritten signature in black ink, appearing to read "Janet Napolitano", followed by a horizontal line.
Janet Napolitano
Governor

JN:TN/jm

cc: The Honorable Michele Reagan

Conference Engrossed

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 383

HOUSE BILL 2621

AN ACT

AMENDING SECTIONS 4-101, 4-209, 4-213 AND 4-311, ARIZONA REVISED STATUTES;
AMENDING LAWS 2005, CHAPTER 284, SECTION 15; MAKING AN APPROPRIATION;
RELATING TO SPIRITUOUS LIQUOR.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 4-101, Arizona Revised Statutes, is amended to
3 read:

4 4-101. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Act of violence" means an incident consisting of a riot, a brawl
7 or a disturbance, in which bodily injuries are sustained by any person and
8 such injuries would be obvious to a reasonable person, or tumultuous conduct
9 of sufficient intensity as to require the intervention of a peace officer to
10 restore normal order, or an incident in which a weapon is brandished,
11 displayed or used. Act of violence does not include the use of nonlethal
12 devices by a peace officer.

13 2. "Aggrieved party" means a person who resides at, owns or leases
14 property within a one mile radius of a premises proposed to be licensed and
15 who filed a written request with the department to speak in favor of or
16 opposition to the issuance of the license no later than sixty days after the
17 filing of the application or fifteen days after action by the local governing
18 body, whichever is later.

19 3. "Beer" means any beverage obtained by the alcoholic fermentation,
20 infusion or decoction of barley malt, hops, or other ingredients not
21 drinkable, or any combination of them.

22 4. "Board" means the state liquor board.

23 5. "Bona fide guest" means:

24 (a) A person who is actually a houseguest or a person whose presence
25 as a guest is in response to a specific and personal invitation.

26 (b) In the case of a club that meets the criteria prescribed in
27 paragraph 7, subdivision (a) of this section, a current member of the armed
28 services of the United States who presents proper military identification and
29 any member of a recognized veterans' organization of THE UNITED STATES AND OF
30 any country allied with the United States during current or past wars or
31 through treaty arrangements.

32 6. "Broken package" means any container of spirituous liquor on which
33 the United States tax seal has been broken or removed, or from which the cap,
34 cork or seal placed thereupon by the manufacturer has been removed.

35 7. "Club" includes any of the following organizations where the sale
36 of spirituous liquor for consumption on the premises is made to members only:

37 (a) A post, chapter, camp or other local unit composed solely of
38 veterans and its duly recognized auxiliary which has been chartered by the
39 Congress of the United States for patriotic, fraternal or benevolent purposes
40 and which has, as the owner, lessee or occupant, operated an establishment
41 for that purpose in this state.

42 (b) A chapter, aerie, parlor, lodge or other local unit of an American
43 national fraternal organization which has as the owner, lessee or occupant
44 operated an establishment for fraternal purposes in this state. An American
45 national fraternal organization as used in this subdivision shall actively

1 operate in not less than thirty-six states or have been in active continuous
2 existence for not less than twenty years.

3 (c) A hall or building association of a local unit mentioned in
4 subdivisions (a) and (b) of this paragraph, all of the capital stock of which
5 is owned by the local unit or the members, and which operates the clubroom
6 facilities of the local unit.

7 (d) A golf club which has more than fifty bona fide members and which
8 owns, maintains or operates a bona fide golf links together with a clubhouse.

9 (e) A social club with more than one hundred bona fide members who are
10 actual residents of the county in which it is located, that owns, maintains
11 or operates club quarters, is authorized and incorporated to operate as a
12 nonprofit club under the laws of this state, and has been continuously
13 incorporated and operating for a period of not less than one year. The club
14 shall have had, during this one year period, a bona fide membership with
15 regular meetings conducted at least once each month, and the membership shall
16 be and shall have been actively engaged in carrying out the objects of the
17 club. The club's membership shall consist of bona fide dues paying members
18 paying at least six dollars per year, payable monthly, quarterly or annually,
19 which have been recorded by the secretary of the club, and the members at the
20 time of application for a club license shall be in good standing having for
21 at least one full year paid dues. At least fifty-one per cent of the members
22 shall have signified their intention to secure a social club license by
23 personally signing a petition, on a form prescribed by the board, which shall
24 also include the correct mailing address of each signer. The petition shall
25 not have been signed by a member at a date earlier than thirty days prior to
26 the filing of the petition. The club shall qualify for exemption from the
27 payment of state income taxes under title 43. It is the intent of this
28 paragraph that a license shall not be granted to a club which is, or has
29 been, primarily formed or activated to obtain a license to sell liquor, but
30 solely to a bona fide club, where the sale of liquor is incidental to the
31 main purposes of the club.

32 (f) An airline club operated by or for airlines which are certificated
33 by the United States government and which maintain or operate club quarters
34 located at airports with international status.

35 8. "Company" or "association", when used in reference to a
36 corporation, includes successors or assigns.

37 9. "Control" means the power to direct or cause the direction of the
38 management and policies of an applicant, licensee or controlling person,
39 whether through the ownership of voting securities or a partnership interest,
40 by agreement or otherwise. Control is presumed to exist if a person has the
41 direct or indirect ownership of or power to vote ten per cent or more of the
42 outstanding voting securities of the applicant, licensee or controlling
43 person or to control in any manner the election of one or more of the
44 directors of the applicant, licensee or controlling person. In the case of a
45 partnership, control is presumed to mean the general partner or a limited

1 partner who holds ten per cent or more of the voting rights of the
2 partnership. For the purposes of determining the percentage of voting
3 securities owned, controlled or held by a person, there shall be aggregated
4 with the voting securities attributed to the person the voting securities of
5 any other person directly or indirectly controlling, controlled by or under
6 common control with the other person, or by an officer, partner, employee or
7 agent of the person or by a spouse, parent or child of the person. Control
8 is also presumed to exist if a creditor of the applicant, licensee or
9 controlling person holds a beneficial interest in ten per cent or more of the
10 liabilities of the licensee or controlling person.

11 10. "Controlling person" means a person directly or indirectly
12 possessing control of an applicant or licensee.

13 11. "Department" means the department of liquor licenses and control.

14 12. "Director" means the director of the department of liquor licenses
15 and control.

16 13. "Distilled spirits" includes alcohol, brandy, whiskey, rum,
17 tequila, mescal, gin, absinthe, a compound or mixture of any of them or of
18 any of them with any vegetable or other substance, alcohol bitters, bitters
19 containing alcohol, fruits preserved in ardent spirits, and any alcoholic
20 mixture or preparation, whether patented or otherwise, which may in
21 sufficient quantities produce intoxication.

22 14. "Employee" means any person who performs any service on licensed
23 premises on a full-time, part-time or contract basis with consent of the
24 licensee, whether or not the person is denominated an employee, independent
25 contractor or otherwise. Employee does not include a person exclusively on
26 the premises for musical or vocal performances, for repair or maintenance of
27 the premises or for the delivery of goods to the licensee.

28 15. "Government license" means a license to serve and sell spirituous
29 liquor on specified premises available only to a county, city, town or state
30 university or the Arizona coliseum and exposition center upon application by
31 the governing body of a county, city, town or state university or the Arizona
32 exposition and state fair board.

33 16. "Legal drinking age" means the age of twenty-one years or older.

34 17. "License" means a license or an interim retail permit issued
35 pursuant to the provisions of this title.

36 18. "License fees" means fees collected for license issuance, license
37 application, license renewal, interim permit issuance and license transfer
38 between persons or locations.

39 19. "Licensee" means a person who has been issued a license or an
40 interim retail permit pursuant to the provisions of this title or a special
41 event licensee.

42 20. "Manager" means a natural person who meets the standards required
43 of licensees and has authority to organize, direct, carry on, control or
44 otherwise operate a licensed business on a temporary or full-time basis.

1 21. "Off-sale retailer" means any person operating a bona fide
2 regularly established retail liquor store selling spirituous liquors, wines
3 and beer, and any established retail store selling commodities other than
4 spirituous liquors and engaged in the sale of spirituous liquors only in the
5 original unbroken package, to be taken away from the premises of the retailer
6 and to be consumed off the premises.

7 22. "On-sale retailer" means any person operating an establishment
8 where spirituous liquors are sold in the original container for consumption
9 on or off the premises or in individual portions for consumption on the
10 premises.

11 23. "Person" includes a partnership, limited liability company,
12 association, company or corporation, as well as a natural person.

13 24. "Premises" or "licensed premises" means the area from which the
14 licensee is authorized to sell, dispense or serve spirituous liquors under
15 the provision of the license.

16 25. "Registered mail" includes certified mail.

17 26. "Registered retail agent" means any person who is authorized
18 pursuant to section 4-222 to purchase spirituous liquors for and on behalf of
19 himself and other retail licensees.

20 27. "Repeated acts of violence" means two or more acts of violence
21 occurring within seven days, three or more acts of violence occurring within
22 thirty days or acts of violence occurring with any other similar frequency
23 which the director determines to be unusual or deserving of review.

24 28. "Sell" includes soliciting or receiving an order for, keeping or
25 exposing for sale, directly or indirectly delivering for value, peddling,
26 keeping with intent to sell and trafficking in.

27 29. "Spirituous liquor" includes alcohol, brandy, whiskey, rum,
28 tequila, mescal, gin, wine, porter, ale, beer, any malt liquor or malt
29 beverage, absinthe, a compound or mixture of any of them or of any of them
30 with any vegetable or other substance, alcohol bitters, bitters containing
31 alcohol, any liquid mixture or preparation, whether patented or otherwise,
32 which produces intoxication, fruits preserved in ardent spirits, and
33 beverages containing more than one-half of one per cent of alcohol by volume.

34 30. "Vehicle" means any means of transportation by land, water or air,
35 and includes everything made use of in any way for such transportation.

36 31. "Vending machine" means a machine that dispenses merchandise
37 through the means of coin, token, credit card or other nonpersonal means of
38 accepting payment for merchandise received.

39 32. "Veteran" means a person who has served in the United States air
40 force, army, navy, marine corps or coast guard, as an active nurse in the
41 services of the American red cross, in the army and navy nurse corps in time
42 of war, or in any expedition of the armed forces of the United States, and
43 who has received a discharge other than dishonorable.

1 33. "Voting security" means any security presently entitling the owner
2 or holder of the security to vote for the election of directors of an
3 applicant, licensee or controlling person.

4 34. "Wine" means the product obtained by the fermentation of grapes or
5 other agricultural products containing natural or added sugar or any such
6 alcoholic beverage fortified with grape brandy and containing not more than
7 twenty-four per cent of alcohol by volume.

8 Sec. 2. Section 4-209, Arizona Revised Statutes, is amended to read:

9 4-209. Fees for license, application, issuance, renewal and
10 transfer; late renewal penalty; seasonal operation;
11 surcharges

12 A. A fee shall accompany an application for an original license or
13 transfer of a license, or in case of renewal, shall be paid in advance.
14 Every license expires annually. A licensee who fails to renew the license on
15 or before the due date shall pay a penalty of one hundred fifty dollars which
16 the licensee shall pay with the renewal fee. A license renewal that is
17 deposited, properly addressed and postage prepaid in an official depository
18 of the United States mail on or before the due date shall be deemed filed and
19 received by the department on the date shown by the postmark or other
20 official mark of the United States postal service stamped on the envelope.
21 If the due date falls on a Saturday, Sunday or other legal holiday, the
22 renewal shall be considered timely if it is received by the department on the
23 next business day. The director may waive a late renewal penalty if good
24 cause is shown by the licensee. A licensee who fails to renew the license on
25 or before the due date may not sell, purchase or otherwise deal in spirituous
26 liquor until the license is renewed. A license which is not renewed within
27 sixty days after the due date is deemed terminated. The director may renew
28 the terminated license if good cause is shown by the licensee. An
29 application fee for an original license or the transfer of a license shall be
30 one hundred dollars, which shall be retained by this state.

31 B. Issuance fees for original licenses shall be:

32 1. For an in-state producer's license, to manufacture or produce
33 spirituous liquor in this state, one thousand five hundred dollars.

34 2. Except as provided in paragraph 15 of this subsection, for an
35 out-of-state producer's, exporter's, importer's or rectifier's license, two
36 hundred dollars.

37 3. For a domestic microbrewery license, three hundred dollars.

38 4. For a wholesaler's license, to sell spirituous liquors, one
39 thousand five hundred dollars.

40 5. For a government license issued in the name of a county, city or
41 town, one hundred dollars.

42 6. For a bar license, which is an on-sale retailer's license to sell
43 all spirituous liquors primarily by individual portions and in the original
44 containers, one thousand five hundred dollars.

1 7. For a beer and wine bar license, which is an on-sale retailer's
2 license to sell beer and wine primarily by individual portions and in the
3 original containers, one thousand five hundred dollars.

4 8. For a conveyance license issued to an operating railroad company,
5 to sell all spirituous liquors in individual portions or in the original
6 containers on all passenger trains operated by the railroad company, or to an
7 operating airline company, to sell or serve spirituous liquors solely in
8 individual portions on all passenger planes operated by the airline company,
9 or to a boat operating in the waters of this state, to sell all spirituous
10 liquors in individual portions or in the original containers for consumption
11 on the boat, one thousand five hundred dollars.

12 9. For a liquor store license, which is an off-sale retailer's license
13 to sell all spirituous liquors, one thousand five hundred dollars.

14 10. For a beer and wine store license, which is an off-sale retailer's
15 license to sell beer and wine, one thousand five hundred dollars.

16 11. For a hotel-motel license issued as such, to sell and serve
17 spirituous liquors solely for consumption on the licensed premises of the
18 hotel or motel, one thousand five hundred dollars.

19 12. For a restaurant license issued as such, to sell and serve
20 spirituous liquors solely for consumption on the licensed premises of the
21 restaurant, one thousand five hundred dollars.

22 13. For a domestic farm winery license, one hundred dollars.

23 14. For a club license issued in the name of a bona fide club qualified
24 under this title to sell all spirituous liquors on-sale, one thousand
25 dollars.

26 15. For an out-of-state winery that sells not more than fifty cases of
27 wine in this state in a calendar year, twenty-five dollars.

28 C. The department may issue licenses with staggered renewal dates to
29 distribute the renewal ~~work-load~~ WORKLOAD as uniformly as practicable
30 throughout the twelve months of the calendar year. If a license is issued
31 less than six months before the scheduled renewal date of the license, as
32 provided by the department's staggered license renewal system, one-half of
33 the annual license fee shall be charged.

34 D. The annual fees for licenses shall be:

35 1. For an in-state producer's license, to manufacture or produce
36 spirituous liquors in this state, three hundred fifty dollars.

37 2. Except as provided in paragraph 15 of this subsection, for an
38 out-of-state producer's, exporter's, importer's or rectifier's license, fifty
39 dollars.

40 3. For a domestic microbrewery license, three hundred dollars.

41 4. For a wholesaler's license, to sell spirituous liquors, two hundred
42 fifty dollars.

43 5. For a government license issued to a county, city or town, one
44 hundred dollars.

1 6. For a bar license, which is an on-sale retailer's license to sell
2 all spirituous liquors primarily by individual portions and in the original
3 containers, one hundred fifty dollars.

4 7. For a beer and wine bar license, which is an on-sale retailer's
5 license to sell beer and wine primarily by individual portions and in the
6 original containers, seventy-five dollars.

7 8. For a conveyance license issued to an operating railroad company,
8 to sell all spirituous liquors in individual portions or in the original
9 containers on all passenger trains operated by the railroad company, or to an
10 operating airline company, to sell or serve spirituous liquors solely in
11 individual portions on all passenger planes operated by the airline company,
12 or to a boat operating in the waters of this state, to sell all spirituous
13 liquor in individual portions or in the original containers for consumption
14 on the boat, two hundred twenty-five dollars.

15 9. For a liquor store license, which is an off-sale retailer's license
16 to sell all spirituous liquors, fifty dollars.

17 10. For a beer and wine store license, which is an off-sale retailer's
18 license to sell beer and wine, fifty dollars.

19 11. For a hotel-motel license issued as such, to sell and serve
20 spirituous liquors solely for consumption on the licensed premises of the
21 hotel or motel, five hundred dollars.

22 12. For a restaurant license issued as such, to sell and serve
23 spirituous liquors solely for consumption on the licensed premises of the
24 restaurant, five hundred dollars, AND FOR A RESTAURANT LICENSE THAT IS
25 PERMITTED TO CONTINUE OPERATING AS A RESTAURANT PURSUANT TO SECTION 4-213,
26 SUBSECTION E, AN ADDITIONAL AMOUNT ESTABLISHED BY THE DIRECTOR. THE
27 DEPARTMENT SHALL TRANSFER THIS AMOUNT TO THE STATE TREASURER FOR DEPOSIT IN
28 THE STATE GENERAL FUND.

29 13. For a domestic farm winery license, one hundred dollars.

30 14. For a club license issued in the name of a bona fide club qualified
31 under this title to sell all spirituous liquors on-sale, one hundred fifty
32 dollars.

33 15. For an out-of-state winery that sells not more than twenty-five
34 cases of wine in this state in a calendar year, twenty-five dollars.

35 E. Where the business of an on-sale retail licensee is seasonal, not
36 extending over periods of more than six months in any calendar year, the
37 licensee may designate the periods of operation, and a license may be granted
38 for those periods only, upon payment of one-half of the fee prescribed in
39 subsection D of this section.

40 F. Transfer fees from person to person for licenses transferred
41 pursuant to section 4-203, subsection C shall be three hundred dollars.

42 G. Transfer fees from location to location, as provided for in section
43 4-203, shall be one hundred dollars.

44 H. Assignment fees for a change of agent, as provided for in section
45 4-202, subsection C, shall be one hundred dollars, except that where a

1 licensee holds multiple licenses the assignment fee for the first license
2 shall be one hundred dollars and the assignment fee for all remaining
3 licenses transferred to the same agent shall be fifty dollars each, except
4 that the aggregate assignment fees shall in no event exceed one thousand
5 dollars.

6 I. No fee shall be charged by the department for an assignment of a
7 liquor license in probate or an assignment pursuant to the provisions of a
8 will or pursuant to a judicial decree in a domestic relations proceeding
9 which assigns ownership of a business which includes a spirituous liquor
10 license to one of the parties in the proceeding. In the case of
11 nontransferable licenses no fee shall be charged by the department for the
12 issuance of a license for a licensed business pursuant to a transfer of the
13 business in probate or pursuant to the provisions of a will or pursuant to a
14 judicial decree in a domestic relations proceeding which assigns ownership of
15 the business to one of the parties in the proceeding.

16 J. The director shall assess a surcharge of thirty dollars on all
17 licenses prescribed in subsection D, paragraphs 6, 7 and 12 of this section.
18 Monies from the surcharge shall be used by the department exclusively for the
19 costs of an auditor and support staff to review compliance by applicants and
20 licensees with the requirements of section 4-205.02, subsection E. The
21 department shall assess the surcharge as part of the annual license renewal
22 fee.

23 K. The director shall assess a surcharge of thirty-five dollars on all
24 licenses prescribed in this section. Monies from the surcharge shall be used
25 by the department exclusively for the costs of an enforcement program to
26 investigate licensees who have been the subject of multiple complaints to the
27 department. The enforcement program shall respond to complaints against
28 licensees by neighborhood associations, by neighborhood civic groups and from
29 municipal and county governments. The department shall assess the surcharge
30 as part of the annual license renewal fee.

31 L. The director shall assess a surcharge of twenty dollars on all
32 licenses prescribed in subsection D, paragraphs 11 and 12 of this section and
33 thirty-five dollars on all other licenses prescribed in this section. Monies
34 from the surcharge and from surcharges imposed pursuant to subsection K of
35 this section shall be used by the department exclusively for the costs of a
36 neighborhood association interaction and liquor enforcement management unit.
37 The unit shall respond to complaints from neighborhood associations,
38 neighborhood civic groups and local governing authorities regarding liquor
39 violations. The director shall report the unit's activities to the board at
40 each board meeting or as the board may direct.

41 Sec. 3. Section 4-213, Arizona Revised Statutes, is amended to read:
42 4-213. Restaurant audit

43 A. The director may require a restaurant to submit an audit of its
44 records to demonstrate compliance with section 4-205.02. The director shall
45 not require AN ESTABLISHMENT TO SUBMIT TO such an audit more than once a year

1 after the initial twelve months of operation EVEN IF THE ESTABLISHMENT IS
2 ALLOWED TO CONTINUE OPERATING AS A RESTAURANT PURSUANT TO SUBSECTION E OF
3 THIS SECTION.

4 B. Except as provided in subsection D of this section, the department
5 shall audit accounts, records and operations of a licensee that cover a
6 twelve month period. An establishment that averages at least forty per cent
7 of its gross revenue from the sale of food during the twelve month audit
8 period shall be deemed to comply with the gross revenue requirements of
9 section 4-205.02. The twelve month audit period shall fall within the
10 sixteen months immediately preceding the beginning of the audit.

11 C. If the audit OR A CONSENT AGREEMENT THAT MAY BE OFFERED AT THE
12 DISCRETION OF THE DIRECTOR AND THAT IS SIGNED BY THE LICENSEE AND THE
13 DIRECTOR reveals that the licensee did not meet the definition of a
14 restaurant as prescribed in section 4-205.02 AND THE PERCENTAGE OF FOOD SALES
15 DETERMINED BY THE AUDIT OR CONSENT AGREEMENT WAS:

16 1. LESS THAN THIRTY PER CENT, the department shall revoke the license.

17 2. AT LEAST THIRTY PER CENT BUT LESS THAN THIRTY-SEVEN PER CENT, THE
18 DEPARTMENT SHALL ALLOW THE LICENSEE A SIX MONTH PERIOD TO EITHER:

19 (a) REPLACE THE LICENSE WITH A BAR OR BEER AND WINE BAR LICENSE,
20 EXCEPT THAT, AT THE END OF THAT SIX MONTH PERIOD, THE DEPARTMENT SHALL REVOKE
21 THE RESTAURANT LICENSE OR THE LICENSEE SHALL SURRENDER THE RESTAURANT
22 LICENSE.

23 (b) OBTAIN PERMISSION FROM THE DEPARTMENT TO CONTINUE OPERATING WITH A
24 RESTAURANT LICENSE PURSUANT TO SUBSECTION E OF THIS SECTION.

25 3. AT LEAST THIRTY-SEVEN PER CENT BUT LESS THAN FORTY PER CENT, THE
26 LICENSEE SHALL BE GRANTED A PERIOD OF ONE YEAR TO INCREASE THE FOOD
27 PERCENTAGE TO AT LEAST FORTY PER CENT. IF THE LICENSEE DOES NOT INCREASE THE
28 PERCENTAGE OF FOOD SALES TO AT LEAST FORTY PER CENT, THE DEPARTMENT SHALL
29 ALLOW THE LICENSEE A SIX MONTH PERIOD TO EITHER:

30 (a) REPLACE THE LICENSE WITH A BAR OR BEER AND WINE BAR LICENSE,
31 EXCEPT THAT, AT THE END OF THE SIX MONTH PERIOD, THE DEPARTMENT SHALL REVOKE
32 THE RESTAURANT LICENSE OR THE LICENSEE SHALL SURRENDER THE RESTAURANT
33 LICENSE.

34 (b) OBTAIN PERMISSION FROM THE DEPARTMENT TO CONTINUE OPERATING WITH A
35 RESTAURANT LICENSE PURSUANT TO SUBSECTION E OF THIS SECTION.

36 D. The department may conduct an audit of a licensee described in
37 section 4-209, subsection B, paragraph 12 after twelve months following the
38 beginning of operations as a restaurant by the licensee to determine
39 compliance by the licensee with section 4-205.02, except that the department
40 may conduct an audit of a licensee within the first twelve months of
41 operation if the licensee has made a substantial modification in the
42 restaurant equipment, service or entertainment items or seating capacity
43 during that twelve month period, in which event the department may conduct
44 the audit for a period of less than twelve months.

1 E. A RESTAURANT LICENSEE MAY CONTINUE TO OPERATE WITH ITS RESTAURANT
2 LICENSE IF ITS FOOD SALES ARE AT LEAST THIRTY PER CENT AND LESS THAN FORTY
3 PER CENT AND THE DEPARTMENT APPROVES THE CONTINUATION OF THE RESTAURANT
4 LICENSE PURSUANT TO THIS SUBSECTION AND SUBSECTIONS C, F, G, H AND I OF THIS
5 SECTION. THE DEPARTMENT SHALL NOT APPROVE MORE THAN FIFTEEN RESTAURANT
6 LICENSES PURSUANT TO THIS SUBSECTION AND SUBSECTIONS C, F, G, H AND I OF THIS
7 SECTION IN EACH OF THE FISCAL YEARS 2006-2007 AND 2007-2008. THE DEPARTMENT
8 SHALL NOT APPROVE ANY ADDITIONAL LICENSES PURSUANT TO THIS SUBSECTION AND
9 SUBSECTIONS C, F, G, H AND I OF THIS SECTION FROM CONSENT AGREEMENTS ENTERED
10 INTO OR AUDITS CONDUCTED IN ANY FISCAL YEAR AFTER 2007-2008. THE DEPARTMENT
11 MAY APPROVE A REQUEST SUBMITTED BY THE LICENSEE TO CONTINUE TO OPERATE WITH
12 ITS RESTAURANT LICENSE ONLY IF ALL OF THE FOLLOWING APPLY AT THE TIME THE
13 LICENSEE FILES ITS REQUEST WITH THE DEPARTMENT:

14 1. THE RESTAURANT HAS A SUFFICIENT NUMBER OF COOKS, FOOD PREPARATION
15 PERSONNEL AND WAIT STAFF TO PREPARE AND PROVIDE THE RESTAURANT SERVICES THAT
16 ARE NECESSARY FOR THE MENU OFFERED BY THE LICENSEE.

17 2. THE RESTAURANT'S EQUIPMENT IS OF A SUFFICIENT GRADE AND THE SIZE OF
18 THE RESTAURANT'S KITCHEN IS APPROPRIATE TO THE MENU OFFERED AND THE KITCHEN
19 OCCUPIES NOT LESS THAN TWENTY PER CENT OF THE TOTAL FLOOR SPACE OF THE
20 LICENSED PREMISES.

21 3. THE MENU IS OF A TYPE CONSISTENT WITH A RESTAURANT OPERATION. IN
22 MAKING A DETERMINATION PURSUANT TO THIS PARAGRAPH, THE DEPARTMENT MAY
23 CONSIDER THE PROPORTION OF FOOD SALES TO ALCOHOL SALES, THE PRICE OF
24 SPIRITUOUS LIQUOR BEVERAGES AND FOOD SERVED BY THE LICENSEE AND WHETHER THE
25 LICENSEE PROVIDES REDUCED PRICE OR COMPLIMENTARY FOOD AND BEVERAGES.

26 4. NOT MORE THAN THIRTY PER CENT OF THE PUBLIC INTERIOR AREA FLOOR
27 SPACE CONSISTS OF POOL TABLES, DART OR ARCADE GAMES, BARSTOOLS, COCKTAIL
28 TABLES AND SIMILAR TYPES OF SEATING AND DANCE FLOORS, AND THE AGGREGATE AREA
29 OF ALL DANCE FLOORS ON THE PREMISES IS NOT GREATER THAN TEN PER CENT OF THE
30 TOTAL FLOOR SPACE OF THE PUBLIC AREA OF THE PREMISES.

31 5. THE NAME OF THE RESTAURANT DOES NOT INCLUDE TERMS ASSOCIATED WITH
32 ALCOHOL CONSUMPTION, SUCH AS "BAR", "TAVERN", "PUB", "SPIRITS", "CLUB",
33 "LOUNGE", "CABARET", "CANTINA" OR "SALOON".

34 6. DISPOSABLE DINNERWARE AND SMALLWARE, INCLUDING DINING UTENSILS, ARE
35 NOT USED EXCEPT IN OUTDOOR AREAS.

36 F. IF THE DEPARTMENT INTENDS TO APPROVE A RESTAURANT'S CONTINUATION OF
37 OPERATION PURSUANT TO SUBSECTION E OF THIS SECTION:

38 1. THE DEPARTMENT SHALL ADVISE THE GOVERNING BODY OF THE CITY OR TOWN
39 IF THE PREMISES ARE WITHIN THE INCORPORATED LIMITS OF A CITY OR TOWN OR THE
40 COUNTY OF THE DEPARTMENT'S INTENT.

41 2. THE CITY OR TOWN OR THE COUNTY SHALL POST A NOTICE FOR AT LEAST
42 TWENTY DAYS ON THE LICENSED PREMISES THAT THE LICENSEE HAS MADE A REQUEST FOR
43 CONTINUATION TO OPERATE WITH A RESTAURANT LICENSE AND INVITE BONA FIDE
44 RESIDENTS WHO OWN, LEASE OR RESIDE ON PROPERTY WITHIN A ONE MILE RADIUS OF

1 THE LICENSED PREMISES TO FILE WRITTEN COMMENTS WITH THE DEPARTMENT REGARDING
2 THE REQUEST WITHIN THIRTY DAYS OF THE FIRST POSTING OF THE NOTICE.

3 G. IF THE LOCAL JURISDICTION THROUGH ITS GOVERNING BODY OR ITS
4 AUTHORIZED AGENT DOES NOT OBJECT WITHIN NINETY DAYS, THE LICENSEE MAY
5 CONTINUE ITS OPERATION AS A RESTAURANT.

6 H. IF THE DEPARTMENT INTENDS TO DISAPPROVE A RESTAURANT'S CONTINUATION
7 OF OPERATION PURSUANT TO SUBSECTION E OF THIS SECTION, OR IF THE LOCAL
8 JURISDICTION OR ITS AGENT TIMELY OBJECTS TO ITS CONTINUATION, THE DEPARTMENT
9 SHALL SET A HEARING BEFORE THE BOARD AND THE LOCAL JURISDICTION SHALL POST A
10 NOTICE OF THE HEARING FOR A PERIOD OF AT LEAST TWENTY DAYS ON THE LICENSED
11 PREMISES. THE CITY OR TOWN OR THE COUNTY MAY TESTIFY AT THE HEARING AND BONA
12 FIDE RESIDENTS WHO OWN, LEASE OR RESIDE ON PROPERTY WITHIN A ONE MILE RADIUS
13 OF THE LICENSED PREMISES MAY TESTIFY BEFORE THE BOARD REGARDING THE
14 LICENSEE'S REQUEST. THE BOARD SHALL DETERMINE WHETHER THE RESTAURANT MAY
15 CONTINUE ITS OPERATION BASED ON CONSIDERATION OF THE CRITERIA LISTED IN
16 SUBSECTION E OF THIS SECTION.

17 I. A RESTAURANT LICENSEE MAY CONTINUE TO OPERATE WITH ITS RESTAURANT
18 LICENSE PURSUANT TO SUBSECTION E OF THIS SECTION, IF THE RESTAURANT AND THE
19 RESTAURANT LICENSEE CONTINUE TO MEET THE REQUIREMENTS OF THIS SUBSECTION,
20 SUBSECTION E OF THIS SECTION AND ANY OTHER STATUTE. AS A CONDITION OF
21 CONTINUING OPERATION AS A RESTAURANT UNDER SUBSECTION E OF THIS SECTION, THE
22 DEPARTMENT MAY REQUIRE THE LICENSEE TO SPECIFICALLY ACKNOWLEDGE THE
23 REPRESENTATIONS MADE BY THE LICENSEE REGARDING ITS OPERATIONS IN SUPPORT OF
24 THE LICENSEE'S CONTINUING OPERATION AS A RESTAURANT. NOTWITHSTANDING
25 SUBSECTION A OF THIS SECTION, IF THE LICENSEE CHANGES ITS OPERATION IN ANY
26 WAY THAT MATERIALLY AND DETRIMENTALLY AFFECTS THE REPRESENTATIONS MADE BY THE
27 LICENSEE, THE DEPARTMENT MAY AUDIT THE LICENSEE OR TERMINATE THE LICENSE
28 WITHOUT AN AUDIT.

29 Sec. 4. Section 4-311, Arizona Revised Statutes, is amended to read:
30 4-311. Liability for serving intoxicated person or minor;
31 definition

32 A. A licensee is liable for property damage and personal injuries or
33 is liable to a person who may bring an action for wrongful death pursuant to
34 section 12-612, OR BOTH, if a court or jury finds ALL OF the following:

35 1. The licensee sold spirituous liquor either to a purchaser who was
36 obviously intoxicated, or to a purchaser under the legal drinking age without
37 requesting identification containing proof of age or with knowledge that the
38 person was under the legal drinking age. ~~and~~

39 2. The purchaser consumed the spirituous liquor sold by the licensee.
40 ~~and~~

41 3. The consumption of spirituous liquor was a proximate cause of the
42 injury, death or property damage.

43 B. NO LICENSEE IS CHARGEABLE WITH KNOWLEDGE OF PREVIOUS ACTS BY WHICH
44 A PERSON BECOMES INTOXICATED AT OTHER LOCATIONS UNKNOWN TO THE LICENSEE
45 UNLESS THE PERSON WAS OBVIOUSLY INTOXICATED. IF THE LICENSEE OPERATES UNDER

1 A RESTAURANT LICENSE, THE FINDER OF FACT SHALL NOT CONSIDER ANY INFORMATION
2 OBTAINED AS A RESULT OF A RESTAURANT AUDIT CONDUCTED PURSUANT TO SECTION
3 4-213 UNLESS THE COURT FINDS THE INFORMATION RELEVANT.

4 ~~B.~~ C. For the purposes of subsection A, paragraph 2 of this section,
5 if it is found that an underage person purchased spirituous liquor from a
6 licensee and such underage person incurs or causes injuries or property
7 damage as a result of the consumption of spirituous liquor within a
8 reasonable period of time following the sale of the spirituous liquor, it
9 shall create a rebuttable presumption that the underage person consumed the
10 spirituous liquor sold to such person by the licensee.

11 ~~C.~~ D. For the purposes of this section, "obviously intoxicated" means
12 inebriated to such an extent that a person's physical faculties are
13 substantially impaired and the impairment is shown by significantly
14 uncoordinated physical action or significant physical dysfunction, that
15 would have been obvious to a reasonable person.

16 Sec. 5. Laws 2005, chapter 284, section 15 is amended to read:

17 Sec. 15. Temporary transfers of licenses

18 Between July 1, 2006 and December 31, ~~2007~~ 2008, bar, beer and wine bar
19 and liquor store licenses may be transferred from counties with a population
20 of five hundred thousand or more persons to counties with a population of
21 less than five hundred thousand persons.

22 Sec. 6. Applicability of audit provisions

23 Section 4-213, Arizona Revised Statutes, as amended by this act, does
24 not apply to any audit or disciplinary action completed or any consent
25 agreement signed before January 1, 2006.

26 Sec. 7. Reporting requirement

27 The department of liquor licenses and control shall submit a report to
28 the governor, the president of the senate and the speaker of the house of
29 representatives on or before November 1, 2007 and shall provide a copy of
30 this report to the director of the Arizona state library, archives and public
31 records regarding the impact of sections 4-209 and 4-213, Arizona Revised
32 Statutes, as amended by this act. The department of liquor licenses and
33 control shall solicit input from neighborhood groups and local jurisdictions
34 before issuing the report.

35 Sec. 8. Appropriation; department of liquor licenses and
36 control

37 The sum of \$450,000 is appropriated from the state general fund in
38 fiscal year 2006-2007 to the department of liquor licenses and control for
39 the purpose of hiring three additional investigators and two additional
40 auditors.

APPROVED BY THE GOVERNOR JUNE 28, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 28, 2006.